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FILED
MAY 28 1982
ALEXANDER L. STEVAS,
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81-2222

IN THE
SUPREME COURT
OF THE
UNITED STATES

October Term, 1982

Dale and Carol Sweatt,
Petitioners
vs.) Docket No.
Plumbago Mining Corporation,
Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE
SUPREME JUDICIAL COURT
OF THE
STATE OF MAINE

Counsel for Petitioners
Arthur B. LaFrance
Professor of Law
School of Law
University of Maine
Portland, Maine
207-780-4366

Craig Turner, Esq.
21 High Street
South Paris, Maine
207-743-8196

QUESTION PRESENTED

If property is seized in violation of the United States Constitution, and if the seizure was made possible only by concerted action by the police and an adverse civil claimant to the property, should United States v. Janis be extended to authorize the claimant's attachment of the property ?

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JURISDICTION

The question on this Petition is presented by the decision of the Maine Supreme Judicial Court rendered on April 21, 1982 in Plumbago v. Sweatt, appended to this Petition as Exhibit A. Review in this Court is founded on 28 U.S.C. §1257(3). Reconsideration has been denied and a stay pending this Petition was denied on May 11, 1982.

STATEMENT OF THE CASE

In October and November of 1980, the Maine State Police conducted six searches of Dale and Carol Sweatt's home, office, bank vault, tenant's store and attorney's office and files. The Sweatts immediately moved to suppress and return, on the ground that the warrant lacked probable cause. The twenty four page affidavit by Trooper Carter consisted of un-

confirmed double and triple hearsay received from Carter's long-time friend Dean McCrillis, President of Respondent Plumbago Mining Corporation. The property seized was tourmaline, which McCrillis claimed Dale Sweatt had embezzled from Plumbago five years earlier. The Maine Supreme Judicial Court found for the Sweatts and ordered the Sweatts' tourmaline returned. State v. Sweatt, 427 A.2d 940(1981).

In the interim, however, Plumbago had attached the tourmaline in a civil action. The Sweatts thus sought release of the attachment in the Superior Court. They relied on the Supreme Court order and, independently, on the principle that Plumbago should not be allowed to profit from its invasion of the Sweatts' Fourth Amendment rights. The Superior Court accepted both arguments, concluding that

Plumbago should not have a "one hundred yard start." The tourmaline was in fact returned on May 19, 1981.

Nearly one year later, the Maine Supreme Judicial Court ordered the Sweatts to give their tourmaline back to the Sheriff who had attached it while in the hands of the State Police. The opinion of April 21, 1982 rejected both of the Sweatts' arguments. The Court held that Plumbago's misconduct was irrelevant because return of property would not deter illegality. It also held that the trial court should not have relied upon the Supreme Court's earlier order of return. The Maine Supreme Court then concluded - despite Plumbago's illegality - that "It is only fair and equitable that the parties be returned to the status which existed immediately prior to the order vacating the attachment."

The federal question described earlier was thus properly and timely raised in the Superior and Supreme Courts of Maine. Jurisdiction of this Court would be proper upon a writ of certiorari. Since Plumbago's conversion action may proceed against the Sweatts, a stay of the Maine Supreme Court's latest order would avoid mootness.

ARGUMENT

PLUMBAGO SHOULD NOT BE ALLOWED TO PROFIT FROM THE ILLEGALITY IT PROCURED

The trial court held Plumbago could not have a "one hundred yard head start" in attaching the Sweatts' property. The Supreme Court reversed, citing only United States v. Janis, 428 U.S. 433 (1976). But this case is not concerned with the exclusionary rule under Mapp v. Ohio, 367 U.S. 433(1976). The question

instead is whether a civil claimant may use state police for improper ends and nevertheless - after an unconstitutional search - benefit from the fruits. The answer must be no.

Plumbago simply can not be rewarded for inducing unconstitutional misconduct. Constitutionally, the Sweatts must have a remedy for the unconstitutional attachment of their property. Damages are clearly available. Bivens v. Six Unknown Agents, 367 U.S. 433(1976); Monroe v. Pape, 365 U.S. 167(1961). Release of the attachment should also be available. The Maine Supreme Court disagreed, on the ground that release would not deter police. But in a case such as this that conclusion seems clearly wrong. Moreover, deterrence is not a controlling factor when, as here, there are no criminal charges and hence no attempt to exclude evidence.

The Court below thus erred in relying on United States v. Janis, 428 U.S. 433 (1976). This case is not concerned with exclusion of evidence, but with relief for the injury sustained by the Sweatts.

Janis is inapposite also because this case involves not only a criminal seizure but also a civil attachment. Both implicate the State, one through the police and one through the sheriff. Both the Fourth and Fourteenth Amendments were affronted, since Due Process prohibits prejudgment seizures which deny basic concepts of fair play. Fuentes v. Shevin, 407 U.S. 67(1972); Mitchell v. W.T. Grant, 416 U.S. 600(1974). In effect, the state police seizure was a criminal attachment setting up a civil attachment, infringing the Sweatts' rights to both due process and reasonable searches and seizure.

This is a case of extraordinary abuse of official power. McCrillis manipulated the police in a manner later held unconstitutional by the Maine Supreme Judical Court. The police illegality led to seizure of the Sweatts' tourmaline. Plumbago's subsequent discovery and attachment of the Sweatts' tourmaline were made possible only by that seizure. This is thus not a case of a mere windfall.

This case is also extraordinary because the Sweatts sought pre-trial relief from constitutional abuses, and they did so against concerted official and private misconduct. The precise issue has not previously been before this Court, perhaps because it has never previously been so clearly presented and preserved in a lower court. The Sweatts proceeded by motion to suppress and return, producing one Maine Supreme Court opinion invali-

dating the police search, followed by a subsequent opinion upholding Plumbago's attachment. The Question Presented is thus neatly bracketed for decision by this Court.

This question is of importance to many litigants other than Dale and Carol Sweatt. Use and abuse of criminal processes in furtherance of civil cases is commonplace. If search warrants may be employed in tandem with attachments in the full range of civil litigation, the Fourth and Fourteenth Amendments are in serious jeopardy. That jeopardy is a matter of particular concern when the fruits of illegal searches are laundered through civil attachments and citizens are subject not only to illegal invasions but illegal coercion. Ironically, the Sweatts are now under an order to return the very property restored to them after

the illegal seizures: they must now cooperate in the invasion of their own rights.

The Fourth and Fourteenth Amendments were intended to prevent just such a result. Both are implicated by the combined civil/criminal nature of this case. This lends special urgency to this case and is a context long familiar to this Court. See Boyd v. United States, 116 U.S. 616(1886); One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693(1965); Marshall v. Barlow's, Inc., 436 U.S. 307 (1978). Nevertheless, the precise questions raised by Petitioners have not previously been resolved by this Court. They are important; they were fully raised below; they will be fully developed before this Court.

This Court's Review is timely now, since issues concerning prejudgment at-

tachment may be mooted by a final judgment. Moreover, the Maine Supreme Judicial Court refused to reconsider its order of reversal and denied a remand for the Sweatts to develop Plumbago's illegality more fully. Thus, the decision below is final for the purposes of this litigation and will have a profound impact on the future course of the litigation, as well as on the Sweatts' constitutional rights.

Respectfully submitted,
Counsel for Petitioners

May 28, 1982

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Arthur B. LaFrance, Esq.
Professor of Law
University of Maine
School of Law
246 Deering Avenue
Portland, Maine

Craig Turner, Esq.
21 High Street
South Paris, Maine